

1987

Ronald Dean Lancaster v. Gerald Cook, Utah State Prison, et al. : Brief of Respondent

Utah Supreme Court

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UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

RONALD DEAN LANCASTER,

:

Plaintiff-Appellant,

:

Case No. 870431

AND 870431

:

GERALD COOK, Utah State
Prison, et al.,

:

Category No. 3

Respondents.

:

BRIEF OF RESPONDENT

APPEAL FROM A DISMISSAL OF A PETITION FOR
HABEAS CORPUS RELIEF, IN THE THIRD JUDICIAL
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE SCOTT DANIELS,
JUDGE, PRESIDING.

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RONALD DEAN LANCASTER, :
 :
 Plaintiff-Appellant, : Case No. 870431
 :
 v. :
 :
 GERALD COOK, Utah State : Category No. 3
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 :
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IN THE SUPREME COURT OF THE STATE OF UTAH

RONALD DEAN LANCASTER,	:	
Petitioner-Appellant,	:	Case No. 870431
v.	:	
GERALD COOK, Utah State Prison, et al.,	:	Category No. 3
	:	
Respondents.	:	

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from the district court's order dismissing petitioner's petition for a writ of habeas corpus. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2-2(3) (1987) and Utah Code Ann. § 78-2a-3(2)(f) (1987).

STATEMENT OF ISSUE PRESENTED ON APPEAL

The sole issue on appeal is whether the district court correctly dismissed petitioner's petition on the grounds that petitioner had not presented a motion to withdraw his guilty plea in the court in which it was entered.

STATEMENT OF THE CASE

Petitioner, Ronald D. Lancaster, filed a petition for a writ of habeas corpus in the Third District Court (R. 3).¹ Upon the filing of a motion to dismiss by respondents, the district court dismissed the petition (R. 45).

¹ Although petitioner titled his petition as one for a writ of habeas corpus, it technically was a petition for postconviction relief under Utah R. Civ. P. 65B(i). Cf. Utah R. Civ. P. 65B(f).

STATEMENT OF FACTS

The following facts are relevant to petitioner's appeal.

According to the petition petitioner filed in district court, he is currently confined at the Utah State Prison for a conviction of second degree murder after the entry of a plea of guilty (R. 35). Petitioner's central claim was that his guilty plea was involuntarily entered.

Respondents filed a motion to dismiss the petition, arguing that petitioner's claim for relief were not properly before the court because he had not filed a motion to withdraw his guilty plea under Utah Code Ann. § 77-13-6 (1982). The court granted that motion without a hearing (R. 45).

SUMMARY OF ARGUMENT

Because petitioner had not filed a motion to withdraw his guilty plea before seeking relief under Utah R. Civ. P. 65B(i), the district court correctly dismissed petitioner's petition without a hearing.

ARGUMENT

POINT I

THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S PETITION WITHOUT A HEARING ON THE GROUNDS ARGUED IN RESPONDENTS' MOTION TO DISMISS.

On appeal, petitioner argues that the district court improperly dismissed his petition. This argument is without merit.

Although, at first blush, petitioner's claim that his guilty plea was involuntarily entered would appear to be

Although, at first blush, petitioner's claim that his guilty plea was involuntarily entered would appear to be appropriately brought under Utah R. Civ. P. 65B(i)(1) in a proceeding for postconviction relief, a review of the applicable provision in the code of criminal procedure indicates that it is not.

Utah Code Ann. § 77-13-6 (1982) states:

A plea of not guilty may be withdrawn at any time prior to conviction. A plea of guilty or no contest may be withdrawn only upon good cause shown and with leave of court.

This statutory provision governing the withdrawal of a guilty plea--the relief petitioner apparently seeks--sets no time limit for filing a motion to withdraw the plea. Therefore, the proper procedure is for petitioner first to move to withdraw his guilty plea pursuant to § 77-13-6 in the court in which it was entered, before seeking extraordinary relief under Rule 65B(i). See State v. Gibbons, 740 P.2d 1309, 1311-12 (Utah 1987). For the same reasons that the Supreme Court required the defendant in Gibbons to file a motion to withdraw in the trial court before attacking his guilty plea on appeal, the district court correctly ruled that petitioner had to present his claim to the court in which he was convicted before seeking collateral postconviction relief. In that petitioner's ineffective assistance of counsel claim was inextricably linked to the guilty plea issue, it also was not properly before the district court.

Finally, that the district court granted respondents' motion to dismiss without a hearing, see Third Dist. Ct. R. 3(b),

did not deny petitioner due process. A hearing on respondents' motion was neither necessary nor required. Cf. Utah R. Civ. P. 65B(i)(7).

CONCLUSION

Based upon the foregoing arguments, the district court's order dismissing petitioner's petition should be affirmed.

DATED this 12 day of February, 1987.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing brief of respondents were mailed, postage prepaid, to Ronald D. Lancaster, P.O. Box 250, Draper, Utah, 84020, this 12 day of February, 1987.

Sam D. Clark